

Issue: Bearing the Burden for Payment of Tax (Claim Issues)

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IBT # XXXXX

2. The Taxpayer admitted two documents into the record: Taxpayer Exh. #1 was a change of address since the business was sold prior to the subject hearing. Taxpayer Group Exhibit No. 2 were the workpapers memorializing the computations submitted with the subject claim. Handwritten papers with figures supporting the ST-101 which was the "Report to Changes to Sales and Use Tax Return" submitted by the Taxpayer on

January 22, 1991. (Dept Gr. Exh. No. 1).

3. The claim was denied due to the fact that the ST-101 states at Part 2: "Did you collect the overpaid tax from the buyers on these sales?" The form is marked "yes". Further it states: "If yes, did you unconditionally refund the overpaid tax?" The form is marked "No."

CONCLUSIONS OF LAW: Pursuant to 86 Illinois Administrative Regulation 130.1501, "SUBPART O: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX", promulgated under the Retailers Occupation Tax Act (35 ILCS 120/1). It states in pertinent part under section (a)(3)

"In addition, if the Retailers' Occupation Tax was paid on receipts from a sale made on or after August 1, 1995, no credit shall be allowed for any such amount paid by or collected from any claimant unless it shall appear that the claimant has unconditionally repaid, to the purchaser, any amount collected from the purchaser and retained by the claimant with respect to the same transaction under the Use Tax Act." (86 Ill Adm. Code 130.150) (a)(3)).

On examination of the record established, this taxpayer failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence to show it met the criterion of unconditionally repaying the tax to the purchaser. The Department's prima facie case has not been overcome. Accordingly, the determination that the Taxpayer did not prove itself entitled to the credit must stand as a matter of law.

RECOMMENDATION: Pursuant to my findings of fact and conclusions of law I recommend the denial of the Taxpayer's Claim for Credit be upheld.

William J. Hogan
Administrative Law Judge